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FISCAL NOTES FOR STATE AND LOCAL GOVERNMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 3087

STATE AND LOCAL GOVERNMENT FISCAL NOTE ACT OF 1980

S. 2691

STATE AND LOCAL COST ESTIMATE ACT OF 1980

SEPTEMBER 4, 1980

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FISCAL NOTES FOR STATE AND LOCAL GOVERNMENTS

THURSDAY, SEPTEMBER 4, 1980

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL
RELATIONS OF THE COMMITTEE
ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:45 a.m., in room 357, Russell Senate Office Building, Hon. Jim Sasser (chairman of the subcommittee) presiding.

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. The subcommittee will come to order. I apologize to our distinguished witnesses today for being tardy in getting underway. I am sure they will understand that I have already been conducting the people's business this morning.

Today the Intergovernmental Relations Subcommittee opens its hearings on the subject of fiscal notes for State and local government. The two pieces of legislation we are considering are S. 2691, the State and Local Government Cost Estimate Act of 1980 which was introduced earlier this year by my distinguished colleague from New York, Senator Moynihan, and the State and Local Government Fiscal Note Act of 1980. I have introduced the Fiscal Note Act today with the cosponsorship of Senators Moynihan, Roth, Nunn, and Danforth.

Both the Fiscal Note Act and S. 2691 would require the Congressional Budget Office to estimate the costs which would be incurred by State and local governments in carrying out or complying with Federal legislation. These estimates would be made only for those bills or resolutions which are reported by congressional committees, not for all bills which are introduced. The CBO already undertakes these estimates, commonly known as fiscal notes, to determine such costs to the Federal Government itself.

I think the rationale for both bills is very straightforward. The costs of many activities undertaken to further Federal policies are not always borne exclusively by the Federal Government. On the contrary, significant costs may be assigned to State and local governments, sometimes with accompanying Federal assistance, but sometimes without. I hear of these costs from many State and local officials and I am sure my other colleagues do as well.

By extending the fiscal note process to include the costs to State and local governments, the Congress would be better able to evaluate

whether the total benefits of a given program are justified by the total costs, and if so, to determine just how the costs should be apportioned among the three levels of government.

In hearings before the House Budget Committee last year, H.R. 3697, the House equivalent of S. 2691, received the unanimous support of the State and local public officials who testified.

S. 3087, the State and Local Fiscal Note Act differs from S. 2691 in three areas. First, the effective date would be October 1, 1981, thus providing ample time for the Congressional Budget Office to develop appropriate methodologies for this analysis.

Second, the bill would require State and local fiscal notes only for bills or resolutions which would result in an annual cost of $200 million or more to State or local governments or which would have exceptional fiscal consequences for a particular level of government or a geographic region.

And third, it includes a sunset provision by which the Act will expire on September 30, 1984.

The second of the three changes should keep the potential workload of the Congressional Budget Office to a reasonable level. Rather than requiring the CBO to prepare fiscal notes on all the approximately 100 to 200 bills reported annually which affect the lower levels of government, the CBO would only develop fiscal notes for those which would impose significant costs.

Should a bill or resolution not exceed the $200 million cost floor, but still have exceptional fiscal consequences for a particular level of government or geographic region, the CBO would prepare a fiscal note anyway.

So, I am pleased today to welcome our witnesses to testify on this important and timely topic.

Our first witness will be Senator Daniel P. Moynihan who has done yeoman service in this particular area. I want to welcome you to the subcommittee and say, as always, I look forward eagerly to your observations and perceptions.

TESTIMONY OF HON. DANIEL P. MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. You are more than generous. On behalf of all of the witnesses this morning, may I thank you for finding the time at the end of the congressional season to hold these hearings on what I and you think is an important piece of legislation and an important idea.

We have talked about this matter before and I need not keep you long in this presentation of mine. You will want to hear from Mr. Conway, Mr. Bragg, and Dr. Rivlin.

I would like to offer just a very few general comments. The first is that there is a rule in government—I think it has been pretty well shown over the years—that you never do anything about a problem until you learn to measure it. We have, I think, too little appreciation of the role of measurement in the affairs of government and public life. We went through the whole of the 1930's and never knew what the unemployment rate was, and not knowing what it was, when we took a census, it was very difficult to respond to.

Of late we have clearly been running into a crisis in federalism. It has been around for a long time, largely since the dynamics of the progressive income tax began to suck money upward in the system, and an expanding notion of social provision began to make greater claims at the local levels.

We responded in various ways. One of the consequences of the response was to see the cost of government going up generally and in reaction to that we passed in 1974 the Congressional Budget Act. Congress began to ask: What would the legislation contemplated cost the Federal Government?

That question in itself and those measurements in themselves brought about a certain displacement of cost. The more you found out what it would cost the Federal Government, the more the temptation was to move the cost on to other governments.

Not surprising, 6 years later Mayor Koch of New York City addressed the Conference of Mayors here in Washington, and in his speech, entitled "The Mandate Millstone," he described the increasing tendency of Congress to pass legislation which promises large social services, but imposes the cost elsewhere.

Now, how much is that the case? We have now raised the issue; the argument could go on for nine generations until someone measures the problem. That is what this hearing is about.

I think, Mr. Chairman, that the techniques of this kind of measurement are reasonably developed. Dr. Rivlin and the CBO have gone a long way toward that. I think your proposals to confine these to measures of substance, where the annual cost to State and local governments exceeds $200 million or where exceptional fiscal consequence are felt by governments or localities, is a prudent one.

I would like to point out that we are not dealing just with a specific here. We are dealing with the question of federalism. Something happened to get things all mixed up. This past July the Advisory Commission on Intergovernmental Relations put out the first of a series of studies which made the case persuasively that we are getting our priorities all mixed up here in Washington. More and more we are fooling around with the cats and dogs of municipal administrations and leaving mayors to deal with large national issues. We take care of urban parks. Mayors take care of providing social services to the poor. Just the opposite of what any ordinary system should do.

One of the reasons this is happening is that we are kind of running out of money at the top. There is a strong tendency to pass bills which either do very little or cost very little but sound good. Urban parks: Cities can take care of urban parks.

The beginning of this was President Johnson's proposal on the rats bill. He had a small idea but it was carried in the House and became a big idea: The Federal Government would take care of rats. I remember studying that the urban rat lives and dies within 150 yards of his birthplace. It is not a Federal problem. They never cross streets. They stay right where they are. [Laughter.]

The reason the bill was supported at all was—something that was hard to tell the President at that time—the Public Health Service was afraid that bubonic plague might be coming back from Vietnam so they needed a little extra money.

We had no business passing legislation about rats. But the tendency continues, and while it does we are putting greater and inappropriate burdens on State and local officials.

In 4 years we added $220 billion to social services but we have not added a single social program. We have not even kept up the level of free payments of revenue sharing going to State and local governments, and we have continued to add to the mandates we impose on them. Your legislation, and the bill I put before you and others, has, I think, the capacity to require some specifics of what is just a generally disturbing and obviously demanding issue. I thank you, Mr. Chairman.

Senator SASSER. Thank you, Senator Moynihan.

Senator, I want to congratulate you on introducing S. 2691 and on cosponsoring S. 3087, the Fiscal Note Act of 1980. I have just one brief inquiry.

What would be the main benefit to State and local governments in New York if this fiscal note legislation were to pass and become law?

Senator MOYNIHAN. Mr. Chairman, would you mind if I replied to your question with another?

What do you think has been the main benefit of the legislation which we adopted, section 504 of the Rehabilitation Act of 1973 which required total accessibility of the handicapped to any federally assisted program or facility?

It seemed like a good idea at the time, and obviously it is a good idea. But now it turns out it will cost the mayor of New York $2.8 billion to adopt the transit system alone, and he doesn't have that. He is in a kind of a fix, Mr. Chairman.

Is he to borrow the money? As you well know, he can't. Is he then to close down the subway system? What is this man to do? The law says do something he cannot do. It imposes costs on him that he cannot pay. What is he to do? Go to jail? I guess he can go to jail, the Federal marshals taking him off in a wheelchair. [Laughter.]

The point is, with this legislation intact we will not impose upon the mayors of Nashville, St. Louis, Buffalo, Los Angeles tasks they cannot perform. We will be governing in the full knowledge of what decisions we have made and in that way make them responsible.

Senator SASSER. Senator Moynihan, I think you have cited a very dramatic example of the problem we are trying to get at in this particular legislation.

Thank you very much for coming here this morning and giving us the benefit of your views.

Senator MOYNIHAN. May I thank you for your leadership. The fact that you would take up this issue, with an outcome which seemed very dim and unlikely, is very promising to us. We thank you, Mr. Chairman.

Senator SASSER. Our next witness will be Dr. Alice Rivlin, the Director of the Congressional Budget Office.

Dr. Rivlin, we wish to welcome you and say that we look forward this morning to your always illuminating testimony on issues that face us here in the Senate.

TESTIMONY OF DR. ALICE RIVLIN, DIRECTOR, CONGRESSIONAL BUDGET OFFICE, ACCOMPANIED BY JAMES BLUM, ASSISTANT DIRECTOR FOR BUDGET ANALYSIS

Dr. RIVLIN. Thank you, Mr. Chairman.

I am delighted to be here. I have with me this morning James Blum who is our Assistant Director for Budget Analysis. If the bills in question are passed, it would fall to Jim and his staff to do the required work.

I am very pleased to present to this subcommittee the views of the Congressional Budget Office on S. 2691, the State and Local Government Cost Estimate Act of 1980. This bill, introduced by Senator Moynihan, would require the CBO to prepare estimates of the costs that would be incurred by State and local governments in complying with the provisions of each bill or resolution reported in the Senate or the House of Representativss. Such estimates would be submitted along with the estimates of Federal costs or reported bills or resolutions that are already required of CBO by section 403 of the Congressional Budget Act.

CBO strongly supports the objective of bringing to the attention of the Congress the anticipated costs to States and localities of carrying out proposed Federal programs in instances when such costs are likely to be significant. In some cases, the burden of Federal initiatives on State and local governments is very heavy—Senator Moynihan's example is a case in point—and focusing only on Federal costs can be misleading. Because of the number and diversity of State and local jurisdictions, however, assembling even reasonably reliable estimates about total State and local costs of proposed legislation can be a difficult and time-consuming task.

CBO has two concerns about S. 2691 as it is currently drafted. First, if the Congress passes S. 2691, it should be realistic about the additional work involved and should provide CBO with the Staff resources needed to develop reliable estimates of State and local costs. Second, it would be wise to make clear that new cost-estimating resources are to be concentrated on major bills that impose significant burdens on State and local governments; CBO's efforts should not be dissipated in the technically demanding work of estimating impacts of small magnitude or narrow scope. This last point is taken care of in the bill you anticipate introducing.

The rest of my statement discusses the feasibility of preparing State and local cost estimates and the expected cost of CBO of undertaking this responsibility. It also offers two observations based on our experience with Federal cost estimates.

First on feasibility.

State/local impact estimates are costly to prepare. The diversity of State and local governments—in terms of their structure, responsibilities, and fiscal conditions—means that the effects of proposed Federal legislation will vary widely among jurisdictions. It would therefore not be feasible for CBO to undertake thorough State-by-State analyses; the requirements for data would be too large and the analysis too time consuming. It would be possible, however, to prepare

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reasonable approximations of the costs to the State/local sector as a whole, using estimates of average impacts on various categories of jurisdictions.

In order to to get as clear as possible an idea of the resources CBO would need to prepare State/local estimates, we undertook a State/local impact estimate for H.R. 5482, a bill that would set minimum Federal standards for State workers' compensation programs. The bill contains more than 30 provisions that would affect State workers' compensation costs. Each State is currently in compliance with some of the provisions in the bill; various States, however, comply with different combinations of these provisions.

Analysis of cost impacts is further complicated by the fact that estimates of costs for many provisions in the bill are dependent on the estimates of cost effects of other provisions. Thus, a detailed State-by-State analysis of the cost impacts would have entailed producing a matrix of the compliance with the 30-plus provisions in all 50 States.

To simplify the process, our analysts focused instead on 11 States that were representative of the diversity of workers' compensation plans and that accounted for more than half of the bill's likely aggregate costs. The analysis of this sample of States enabled us to produce an estimate of aggregate costs to State governments, and to private insurers and individuals as well. Even with this simplified procedure, the estimate still required considerable resources—in this instance, about 18 weeks of staff analysts' time.

We believe an independent capability would be necessary for CBO. Our experience with the estimate for H.R. 5482 leads us to conclude that, while State and local governments are likely to be helpful in preparing these estimates, CBO will still need to develop its own independent estimating capability. We cannot expect the States or localities to prepare these estimates, or to provide much assistance in a timely fashion.

We attempted to enlist the aid of State budget offices in estimating the costs to their States of implementing H.R. 5482. Of the three States specifically requested to prepare estimates, only Ohio's budget office was able to cooperate. Estimates for three additional States were prepared for us by the National Council on Compensation Insurance, the primary costing agency for many State compensation boards. To the extent such estimates from other sources are available, they are indeed valuable. Nonetheless, CBO would need its own capability to examine them for completeness and accuracy, in order to insure the Congress of reliable information. In most instances, the shortness of the time available for preparing the estimates would mean that CBO would have to prepare the estimates on its own.

Hence, additional resources would be required. Last December, at the request of the House Budget Committee, CBO prepared a cost estimate for H.R. 3697, the House's companion bill to S. 2691. At that time, we assumed that between 10 and 15 percent of all bills could have cost impacts of significant magnitude on State and local governments. In the light of further examination, this estimate continues to seem a reasonable one.

For a task of this magnitude, we would estimate that the additional personnel and data-gathering and data-processing resources would cost roughly $800,000 in fiscal year 1982—$600,000 at fiscal year 1980 price levels.

I would like the subcommittee to have our original cost estimate. Senator SASSER. It will be inserted in the record at this point.
[The information referred to follows:]

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

DECEMBER 6, 1979.

1. Bill number: H.R. 3697.
2. Bill title: State and Local Government Cost Estimate Act of 1979.
3. Bill status: As introduced and referred to the House Committee on Rules, April 24, 1979.
4. Bill purpose: This legislation would amend the Congressional Budget Act to require the Congressional Budget Office (CBO) to estimate the cost impact that any reported House or Senate bill or resolution would have on state and local governments. Such estimates would be included with the estimates of federal costs currently being prepared by CBO. The amendment would apply only to bills or resolutions ordered reported after the enactment date of this Act.
5. Cost estimate:

[By fiscal years, in millions of dollars]

Fiscal year:	
1980	0.1
1981	0.6
1982	0.8
1983	0.8
1984	0.9

Estimated costs: The costs of this bill fall within budget function 800.

6. Basis of estimate: For the purpose of this estimate, it is assumed that this bill will be enacted by March 1980.

Because estimating the state and local budget impacts requires research and data beyond what is required to estimate federal budget impacts, additional staff would be required to perform the functions mandated by this bill. A survey of cost estimates completed by CBO in 1977 indicated that approximately 15 percent of those estimates covered legislation that could have an impact on state and local government expenditures. Applying this figure to the number of analysts in CBO that prepare cost estimates, it is estimated that 6 cost analysts plus clerical support would be required to prepare the additional analyses. Including benefits and overhead, the cost of the additional staff would be $260,000 at 1980 cost levels. Additionally, development of appropriate expertise for the preparation of these analyses will require special studies and the development and utilization of computerized data bases on state and local government finances and on federal programs affecting states and localities. These studies and the data collection and maintenance are projected to cost approximately $400,000 per year at 1980 prices. All figures have been adjusted over the five-year period by the CBO projection of increases in federal salaries and in the price index for federal purchases of services.

The small estimated cost for fiscal year 1980 reflects a start-up effort during the latter part of the year, which would continue into early 1981. The first year of full costs would be fiscal year 1982.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Kathy Weiss.
10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Dr. RIVLIN. A couple of additional observations, Mr. Chairman.

First, regulatory impacts are often impossible to estimate. Unfortunately, although Federal regulations often turn out to be extremely costly to State and local governments, the cost effect of regulations are often impossible to gauge before implementation. Indeed, the more regulatory authority delegated in a bill, the less practicable it is to estimate that bill's State-local cost impacts. Such effects would necessarily depend on the nature and scope of executive branch

determinations—and perhaps on judicial interpretations as well—in the period following the bill's enactment.

A case in point is section 504 of the Rehabilitation Act of 1973—to which Senator Moynihan has already referred—which is a measure to protect the access of handicapped persons to programs receiving Federal financial assistance. Seven years after the bill's enactment, its meaning, scope, and costs are still subjects of debate. Even if CBO had been in existence in 1973, when the bill was being debated, we would not have been able to furnish a responsible State-local cost estimate because the regulations had not yet been formulated. Thus, for proposed legislation that delegates considerable regulatory authority to administering agencies, CBO's State-local cost estimates would necessarily contain a sizable element of uncertainty.

We believe that this new responsibility would improve some estimates of Federal costs. The preparation of State-local impact estimates would, in some cases, help CBO to produce better estimates of costs to the Federal Government. This is particularly true, for example, for legislation affecting such programs as medicaid or aid to families with dependent children, in which the States share with the Federal Government the costs of providing the benefits. We have found in the past that, to prepare our cost estimates for the Federal share, we have had to make assumptions about the behavior of particular States. Thus, to the extent that we could consider in closer detail the reactions of State and local governments to Federal legislative changes, our Federal cost estimates would improve.

Mr. Chairman, in summary, I believe it is important that the Congress have available assessments of the likely costs to State and local governments of proposed Federal legislation. CBO has devoted effort to understanding what is involved in making these estimates and how much they would cost to prepare. CBO stands ready, Mr. Chairman, to undertake this additional responsibility if we are given the needed resources.

Thank you, Mr. Chairman.

Senator SASSER. Thank you, Dr. Rivlin. Today, I have introduced S. 3087, the Fiscal Note Act of 1980, which is cosponsored by Senators Moynihan, Roth, Nunn and others. Now, one provision of this bill would limit the required fiscal note analysis to those bills or resolutions which have an annual impact of $200 million or more on State and local governments, or in the alternative, to bills or resolutions that would have exceptional fiscal consequences for a particular level of government or for a particular geographic area.

Now, my question to you is: Would these limitations enable you to reduce your workload appreciably and thereby reduce the cost of the fiscal note process to the Congressional Budget Office?

Dr. RIVLIN. I don't think the limitations would enable us to reduce it below what we have already estimated. We were assuming that, by some means or other, our task would be to focus our resources on the bills that would have significant impact on State and local government somehow defined. It is, as you know, difficult to define what "significance" means in advance. But the objective of the provision in your bill is a worthy one. It seeks to avoid having CBO doing a lot of busy work estimating minor impacts of a few million dollars here and

there when the cost of doing the estimate would not be justified by the result.

It seems to me that this provision as worded in your bill is a sensible one. But the point is that the effort of making cost estimates for those bills for which such costs are significant is still not trivial.

Senator SASSER. Dr. Rivlin, we have decided here in the Congress that it is essential to know the cost of legislation that we pass to the Federal Government and, of course, that is one of the functions that CBO, I think, fulfills so well.

But, don't you think it is equally essential that we also know the cost impact on the legislation that we pass also on State and local governments?

Dr. RIVLIN. Yes; I do, Mr. Chairman, as I said in the statement. I think that it is highly important. For a bill entailing significant costs, the Congress cannot intelligently consider it unless it knows what the impact on State and local government is likely to be.

Senator SASSER. As I understand your testimony this morning, you are supportive of the concept of understanding or undertaking to understand the cost of legislation that we pass, the fiscal cost to State and local government. Your only concern is the burden it puts on the staff of CBO and the need for additional staff to implement the act should it pass. Is that a correct statement?

Dr. RIVLIN. That is absolutely correct, Mr. Chairman. The concept seems to us to be a very worthy and important one. But since we would have to do the work, we wanted to point out that to do a good job, a job on which the Congress can rely, it is not something you just do on the back of an envelope. It is going to take substantial new resources. It is an effort we are not engaged in now, and we would hope that the Congress would recognize that and budget accordingly if it passes this bill.

Senator SASSER. Thank you, Dr. Rivlin. I think you are calling something to our attention that we need to think about when we pass this. As you know, I am also chairman of the Legislative Appropriations Subcommittee.

Dr. RIVLIN. Yes.

Senator SASSER. If and when this bill passes, I am sure you and I will be discussing the additional staff.

This reminds me of a story they tell about a young deputy assistant secretary of the navy back in the First World War. They were concerned about German U-boats, so he assembled the staff one day and said, "I know how to get rid of the U-boats, admiral. I have the solution. We will simply boil the ocean. That will get rid of them."

The staff sat there for a while and finally one of them said, "Mr. Secretary, how are we going to do that?"

His response was, "Well, that is for you to work out. You handle the details. I am just the policy man around here."

So what you are telling us is, if you are going to handle the details, you want the manpower to do it. I understand. Thank you, Dr. Rivlin.

Dr. RIVLIN. Thank you, Mr. Chairman.

Senator SASSER. Our next witness is Mayor James Conway, the distinguished mayor of St. Louis, Mo. Mayor Conway is representing today the National League of Cities.

Mayor, we are delighted to see you and glad to have you with us today.

TESTIMONY OF HON. JAMES CONWAY, MAYOR OF THE CITY OF ST. LOUIS, MO.

Mr. CONWAY. Good morning. I want to thank you, Senator Sasser for introducing this legislation, the State and Local Fiscal Note Act of 1980, today. We greatly appreciate your efforts in this area.

I am Mayor James Conway of St. Louis, and I am here today representing the National League of Cities and which represents about 15,000 of the Nations' cities.

Mr. Chairman, we appreciate your holding this hearing this late in the session. We know how much work is before the Senate and what the level of exasperation is by this time. I was a member of the Missouri General Assembly, both in the house and the senate and was there when we first initiated the fiscal note process in our own general assembly. I can testify to the salutary impact that it had on the introduction of often spurious legislation with a significant price tag.

I know, too, that the image we mayors have in Washington is that of us coming to you with hat-in-hand asking for more money. What we are asking for now, however, is something quite different; that is that whenever Congress considers legislation that would have a financial impact on the Nation's cities and other political subdivisions, that we have as much information as possible on that financial impact prior to making those decisions.

We compliment you for taking the initiative on this bill. We have heard no opposition to it, either from public interest groups or Members of Congress. It is sound, progressive, important legislation, with minimal costs.

Mr. Chairman, at this time I would like to turn to the specifics of the bills before you. I will be as brief as possible.

First, the initial difference is that your legislation includes a sunset provision while S. 2691 does not. I have absolutely no fear of the sunset provision because after several years of experience with fiscal notes, I think Congress will have no problem whatever in deciding to make it a permanent fixture.

Second, the effective date. Senator Moynihan's version would make the fiscal note requirement effective immediately; your bill a year later. I recognize the importance of giving CBO a chance to gear up to do an effective job in preparing fiscal notes; consequently, I have no objection to your bill on this point.

Finally, the threshold for activating the fiscal note requirement. Your bill, Mr. Chairman, sets it at $200 million, somewhat higher than we would like. The administration, for example, requires similar statements on proposed rules and regulations with an impact of $100 million. We are satisfied however, that in the initial stages a $200 million threshold will not be an unreasonable impediment.

I am satisfied, too, that, as you have indicated, Mr. Chairman, once given the congressional mandate, CBO will move to meet its requirements responsibly under the act. I am satisfied, too, that CBO will fully utilize the experiences we have had in many States across the Nation, particularly in California where they not only have a fiscal note procedure, but local governments are actually reimbursed for carrying out State mandates imposed on them. Our getting accurate fiscal estimates, the California Legislature has established various models that provide reasonable estimates of the expected cost of the mandates enacted by the State.

I would like to make one final point on this matter, in order that we may all recognize the difficulty involved in making cost estimates.

CBO has cited section 504 of the Rehabilitation Act of 1973, which prohibits handicapped persons from being denied participation in or access to any federally assisted program or facility. Senator Moynihan has made reference to this legislation which has had great fiscal impact on the city of New York. The mayor of New York has also emphasized this point. Mayor Koch, by the way, says he is now doing penance for some of his acts in this area while a Member of the House. I can assure you that he is now a true convert to the problems of mayors and other leaders of local units of government around the United States.

Back to the 1973 Rehabilitation Act. It probably would have been impossible to estimate accurately the cost to States and local governments that resulted from a single line in that bill. However, had the task even been attempted at the time, it may have been concluded that the costs were potentially staggering. That piece of information alone may have been enough to persuade Congress to eliminate, or at least sharply limit, the language in section 504 prior to its enactment. Instead, the Congress inserted what then appeared to be an innocuous one-liner in the bill which we now recognize has had a devastating financial impact on States and local governments.

Let me give you an example from my city. A few years ago in the city of St. Louis, we had the opportunity to get an additional $500,000 from EDA to construct a project we had on the shelf that was ready to go. It happened to be a project that had been passed over in favor of an effort to build a convention center in my city. It was a bridge from a major street to provide access to the convention center, with stairways.

We got a project approval from the Department of Commerce. When the bridge was about two-thirds built, however, I received a complaint from the Architectural Barriers Committee in Washington advising me that the bridge was, in fact, a structure that had to be made accessible. Now the convention center already had full access for people in wheelchairs and handicapped parking; yet because the bridge was construed to be a structure, we were going to have to have a long ramp attached to this bridge and at least one elevator on the bridge. Even though the convention center was totally accessible.

We felt the request to be ridiculous because the cost of the ramp and the elevators exceeded the cost of the bridge itself, which had previously been approved by the Department of Commerce.

Needless to say, I was able to resolve that one. I pointed out how ridiculous it was and that I would see them in the court house if they persisted.

In any case, it is certainly one of the most serious problems that cities face. In some cases, Congress simply does not have a reasonable estimate of what the costs of various programs are at the local level.

Finally, let me say the cities want to be full partners with the Congress in carrying out our many national goals. We believe we know what is going on in our respective communities. We believe we can be allies, and not antagonists, in carrying out those goals.

On the other hand it is essential that, when a program is established, all of us have a generally good understanding of what it will cost each level of government to carry out that program. That is all we are asking for.

Again, we compliment you, Mr. Chairman, for your efforts to put in place what has been needed for a good number of years. I am satisfied, Mr. Chairman, that once we get some experience under this bill, we will never go back to not having any fiscal notes procedure. That is the lesson of our experience in Missouri as well.

Senator SASSER. Thank you, Mayor Conway. I want to thank you for taking time from your busy schedule to come to Washington and give us the benefit of your views on this matter and those of the National League of Cities. Neither myself nor this subcommittee nor the National League of Cities oppose safe drinking water or good air quality. And certainly we don't oppose help for the handicapped in the removal of architectural barriers and that sort of thing. That is not the purpose of the hearing this morning and that is not the thrust of the witnesses' statements.

What we are trying to get at is a determination of the cost of these various pieces of legislation that we in the Congress pass willy-nilly which impose the costs on to State and local governments.

Mayor Conway, St. Louis, like many cities around this country, has had to face some tough budget choices, I am sure, over the last several years. Could you isolate any instances where you had to divert portions of your budget to fulfill federally prescribed requirements of new Federal laws?

Mr. CONWAY. Senator, with most Federal grant programs, there are substantial requirements made of local government in the areas of accounting, reporting, monitoring, and so forth that I think oftentimes are much more costly than they need to be because local governments already have comparable systems in place.

There is a tendency in these programs to require local governments to institute completely new procedures to force uniformity among communities all across the United States. These things have a tendency, without question, to raise the cost of government. It is difficult, however, to isolate the exact costs of these requirements because they are included with all other costs of government.

But I can tell you, Senator, that the costs of providing additional information and complying with additional procedures that are required, add significantly to the cost of doing business at the local level.

Senator SASSER. A recent study by the Urban Institute found that in seven jurisdictions, local revenue sharing funds were virtually all consumed in complying with such pieces of Federal legislation as the Clean Water Act, the Unemployment Compensation Act, and legislation to make transit accessible to the handicapped, as Senator Moynihan so graphically described here earlier.

Is this the experience of St. Louis also?

Mr. CONWAY. It has not been our practice in St. Louis to spend our revenue sharing funds to comply with mandates, but there are certain requirements in the revenue sharing program itself which cause us needless expense. For example, the simple requirement of publication and holding hearings and meetings in addition to our normal budget hearings on items is a substantial added cost to the

city of St. Louis. When we have hearings on general revenue sharing in the city of St. Louis, we are lucky if we have a half a dozen people show up, and they usually regard it as a forum to talk about something else rather than general revenue sharing. We are required by our charter to have hearings on our regular budget which includes general revenue sharing. But, we have to have this special hearing because of those particular provisions.

Senator SASSER. Mayor, the State of Missouri has a fiscal note process. How well does it work for you in Missouri?

Mr. CONWAY. I think it works very well. During the initial startup period, there was as much argument over the estimates as there was on the legislation at issue. Needless to say, if the bill had a large price tag and if you were a sponsor, you wanted to reduce that price tag to make the bill more palatable to other members of the general assembly.

Legislators began to be very concerned about the price tag on any legislation that was introduced. And, of course, whoever referred to the fiscal note had a tendency to be extremely conservative because many of the price tags were overstated. But, as time went on, there began to develop a greater amount of confidence in the fiscal affairs section of the Missouri General Assembly that prepared the estimates, and in time they developed the kind of expertise that most of us had confidence in.

I think it really had a salutary effect on the legislation enacted in Missouri and even on the operations of the general assembly itself.

Senator SASSER. Mayor Conway, thank you very much for coming here this morning and representing the National League of Cities so ably.

Mayor CONWAY. Thank you.

Senator SASSER. I appreciate your remarks.

[The prepared statement of Mayor Conway follows:]

PREPARED STATEMENT OF MAYOR JAMES CONWAY

Mr. Chairman and distinguished members of the committee, I am Mayor James Conway of St. Louis, Mo. My appearance before you today is in my position as second vice president of the National League of Cities. I speak on behalf of the 15,000 cities across the country that NLC represents.

Mr. Chairman, I know that it is getting late in this session of Congress and, from my experience as a state legislator, I know how the workload can multiply close to adjournment dates. There are many pressing matters that require your attention, and it was difficult for you to find the time to hold this hearing. I want you to know that we greatly appreciate your spending time today on a seemingly obscure issue, but which nevertheless could be of significant benefit to state and local governments and, we think, to the Congress.

Often times, the impression is given that the only time city officials appear before Congress is to ask for money for this or that program. Naturally, I do not accept that characterization of us, and I think the issue before us today is a good example of our desire to see government operations improve. Instituting a practice of attaching fiscal notes to federal legislation will not provide one dollar of assistance to state or local governments, but it may save us millions of dollars. While the work of developing the fiscal notes would represent a new cost to the federal government, it is a small one to pay to improve the information available to the Congress on pending bills.

If I could be a totally impartial observer of this legislation for a moment, it appears to me to be something that should be totally without controversy. I would expect to find the bill on Monday's suspension calendar. We have not heard Members of Congress speak out against it. We have read no editorials advocating

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its defeat. We do not think Members are receiving mail from constituents on the subject. There certainly is no dissent among the public interest groups. We do know of the Congressional Budget Office's objections to the legislation (which I will address in a moment), but that aside, this legislation will not arouse objections. We hope that you will be able to move a bill quickly through your committee process and on to the floor.

Let me turn now to the specifics of the two bills before you—S. 2691 by Senator Moynihan and the State and Local Government Fiscal Note Act to be introduced today by you, Senator Sasser. While both bills would accomplish our objective of having attached to all reported bills fiscal notes which detail their fiscal impacts on state and local government, they differ in two respects.

First, your bill, Mr. Chairman, specifies that it would take effect October 1, 1981 while Senator Moynihan's bill would take effect upon enactment. Since this legislation would impose a new obligation on the Congressional Budget Office and there would necessarily be some start-up period, we think that having the enactment date coincide with the start of the fiscal year would help assure that the new procedure gets instituted with sufficient resources. As I have implied, we will be quite pleased just to have the bill enacted; the later enactment date does not concern us.

The second difference between the two bills addresses one of the objections raised by CBO. Senator Moynihan's legislation would require a fiscal note to be attached to any reported bill that has a fiscal impact on state and local governments, as compared to your legislation, Mr. Chairman, which would apply to only those that have an impact of $200 million or more annually.

On this point, we have previously acknowledged CBO's objection to performing cost estimates on all bills. CBO estimates that it currently performs about a thousand cost estimates annually on legislation, and perhaps 10 percent of all reported bills or resolutions have some impact on state and local governments. Of these, CBO says, probably 50 have a "significant" impact. However, we are not sure what is meant by the term "significant."

We are willing to compromise on this point. We will accept the idea of a threshold amount for the fiscal notes although we would prefer that threshold to be an amount less than $200 million. It would, no doubt, cut down on CBO's workload. We would point out, however, that determining whether a bill will exceed $200 million in cost presumes that *all* bills will be examined and at least some estimates of costs made. CBO may have difficulty in determining if a bill will have significant impact, and for that reason, we think it should first consult with state and local government officials and/or organizations representing state and local governments. We recommend that language to that effect be put in the legislation.

Since CBO represents the greatest obstacle to enactment of this bill, let me continue to address other objections it has raised. First, CBO says it may lack the data and appropriate estimation techniques to accurately identify the costs of legislation to State and local governments. This is a serious problem, for certainly we will be done a disservice if bad estimates are made, particularly if they are done on the side of underestimation. Of course it will be difficult to determine the fiscal impact of legislation, but that task is not nearly so difficult as it is for State and local governments to pay the bill for federally mandated costs. Errors will be made, we know that, but this is no reason not to try to determine costs.

It seems to me that it was not that long ago that similar objections were being raised concerning the requirement that estimates be made of the fiscal impact on the Federal Treasury of reported bills. Now those estimates are done routinely. I suspect that once initial difficulties are ironed out and experience gained, fiscal notes for State and local government costs will become routine, too.

Perhaps relating the California solution to the types of technical problems CBO raises would be instructive. As you may know, Mr. Chairman, 33 States now have fiscal note requirements. Your own State (Tennessee) and three others go so far as to require State reimbursement to local governments for State mandated costs. California was a pioneer. In the first few years of its program, estimates of costs were often poorly done. To correct those problems, the State Department of Finance established a network of local governments to feed in data on costs for those bills the Department had trouble estimating.

From the sample data, it could determine costs statewide. As a result, estimates are greatly improved and more closely reflect actual costs. It would not be inconceivable that CBO develop similar methods of acquiring data and using the expertise of State and local officials to make cost estimates.

I will make one final point on this issue. As an example of how difficult it can be to make cost estimates, CBO has cited Section 504 of the Rehabilitation Act

of 1973, which prohibits handicapped persons from being denied participation in or access to any federally assisted program or facility. In retrospect, it probably would have been impossible to estimate the costs to State and local governments that resulted from a single line in a bill. However, had the task even been attempted at the time, it may have been concluded that the costs were potentially staggering. That piece of information alone may have been enough to persuade Congress to tighten or eliminate the language in section 504 prior to its enactment. Instead, it enacted what appeared to be an innocuous one-liner which has had a devastating impact on State and local government.

Another objection that CBO raises is that it would have difficulty estimating the costs to state and local government of legislation that is written using general language until after regulations have been written to implement it, long after enactment. Without realizing it, probably, CBO has raised one of the fundamental problems in the federal system. Once Congress passes a law, the federal agencies through regulations effectively rewrite their own law. This is not a problem that can be solved by instituting fiscal notes, but having fiscal notes would present an excellent way of CBO raising the possibility with Congress that a particular bill could have its costs substantially increased due to federal agencies interpreting vague phraseology. In other words, CBO should look upon this difficulty it raises, not as an obstacle, but as an opportunity to provide another worthwhile service to Congress.

To conclude, Mr. Chairman, we think it is clear that fiscal notes are needed. We can not continue with our present system of government which in the past ten to fifteen years has seen state and local governments become the agents for implementing national objectives, determined by Congress and interpreted by federal agencies, without any regard as to how state and local governments are going to pay for those mandates. If the Federal Government turns out in the next ten years mandates of the magnitude and number adopted in the last ten years, I am afraid local governments will fall under the burden.

I want to also address those who would say that fiscal notes are a device to prevent some of the good programs that have been enacted in the last decade from being enacted in the future. The National League of Cities does not oppose safe drinking water, good air quality, help for the handicapped or most of the other mandates that comprise a very long list. We just want the costs of these otherwise worthwhile undertakings to be identified and the methods for paying for them explored. Fiscal notes can be the first step to achieving greater cost effectiveness in any good proposed program.

There has never been a better time than the present to gain support for this bill. We have all become acutely aware of the need to slow down the rising costs of government. Attaching fiscal notes to legislation before it is passed will help us to know these costs and help prevent needless added expenses.

Thank you.

Senator SASSER. We are going to suspend briefly here for 2 or 3 minutes.

[Whereupon, a short recess was taken.]

Senator SASSER. Our next witness this morning will be Representative John Bragg of Tennessee who will be representing the National Conference of State Legislatures. I might say that Representative Bragg is a nationally recognized figure in the field of State finances, State government fiscal responsibilities. He does an outstanding job, I know, in my native State of Tennessee. We very much appreciate him taking time from his busy schedule to come here this morning to present the views of the National Conference of State Legislatures.

Representative Bragg, we welcome you and look forward to your testimony.

TESTIMONY OF HON. JOHN BRAGG, MEMBER OF THE TENNESSEE GENERAL ASSEMBLY

Mr. BRAGG. I am happy to be here. I am John Bragg, member of the Tennessee General Assembly and chairman of the Finance and

Ways and Means Committee. For the past year I served as a member of the Executive Committee of the National Conference of State Legislatures. I am here to lend our vigorous support to the Senate bill S. 2691, and also to the bill which you plan to introduce today, the State and Local Government Fiscal Note Act of 1980. We wholeheartedly endorse these mesaures.

I want to thank you. I note in the back of the room you have folding chairs from Greeneville, Tenn. I hope the next time you get them from Samsonite in Murfreesboro, Tenn.

As you know, I have been introducing bills concerning the budget in Tennessee since 1971 as chairman of the ways and means committee of the house.

There are budgets and deficits, programs that don't work and burdens that just won't go away. Here is a direct quote along that line.

> The budget should be balanced. The Treasury should be refilled. Public debt should be reduced. The arrogance of officials should be tempered and controlled, and assistance to foreign lands should be curtailed lest we become bankrupt. The people should be forced to work and not depend on the Government for subsistence.

I think you will take some comfort in knowing that that was Cicero who said that 2,000 years ago. We don't have new problems. It is the same problem and I believe that the bills on which we are testifying here today will solve some of those problems.

Approximately 35 States require the attachment of fiscal notes to bills and resolutions under consideration in the legislatures which would increase or decrease revenues, expenditures, or the fiscal liability of the State and its political subdivisions. This has been a great deal of assistance to those of us in the States.

In Tennessee, fiscal notes for bills impacting local government have been required since 1974. In 1977 we passed a constitutional amendment that further requires that the State provide funding to local governments to implement or comply with State-mandated programs or services. California, Florida, and Missouri have similar requirements.

Mr. Chairman, all of the remarks that I could make in theory in support of these bills have already been made by previous speakers, but I do want to address two or three things that we see from where we sit.

From 1956 to 1977 the Federal budget showered State and local governments with a 463-percent increase in funds. It is not hard to comply with Federal mandates when you get that kind of a continued increase in Federal funds. Thirty-five percent of Tennessee's budget is Federal money. From 1977 to 1982 there will have been a decline in real terms of 17 percent in Federal funds for State and local governments. We can't simply fill the gap and we can't simply make up for that decline. We have to know what that decline is going to be on the front end.

In the fiscal year that just ended, Tennessee had a $30.8 million shortfall of anticipated revenue, of which $22 million is in the general fund, $5.8 million is in the highway fund and $2.6 million is in the money that we normally collect and send back without restrictions to local government.

We estimate an equal amount of shortfall in 1980 and 1981 and I think this is going to be true in most of the States, except perhaps in the "Arab" States of this Nation which have energy resources of oil and gas.

Let me just state to you that in our next year's budget we anticipate revenues from the Federal Government to be reduced by $87.9 million. First, there, is $14.4 million in direct reductions in the budget. Other reductions include a loss of revenue sharing of $44.3 million, and a loss of medicaid cost avoidance of $29.2 million. We are not able this year under our budget to take care of all the funds lost to us under medicaid.

I want to point out that while we are losing these Federal funds, the Department of Health and Human Services is planning some new rules, that I have available if you would like to see them, no nursing care and intermediate care facilities. We are the only State in the South, as far as I know, that has testified against these rules. We figure it is going to cost us another $9 million if these rules are implemented.

We also have been looking at the low income energy assistance program and the match for administrative cost. If the current legislation on this program goes into effect, our best estimates project it will cost us another $1.45 million in addition to our present costs.

Then we face the Railroad Revitalization and Regulatory Reform Act of 1976. As you know, Tennessee doesn't collect any property tax. That act took $4 million away from our local government in property tax revenues. The recent Motor Carrier Act is going to take an additional $2 million away from these local government tax revenues.

The biggest utility payer in Tennessee is the telephone company and if they followed the same route as the other utilities, we think we will lose $22 million in local property taxes in Tennessee.

I looked at the fiscal condition of the University of Tennessee in June 1979. In that year they received $55 million in Federal funds but it cost them $10.8 million to receive those funds. The last figure I had from the University of Tennessee's Board of Regents indicated that they received $35 million in funds in 1977. Compliance at that time cost them $6 million.

As a member of the President's Commission on Public Pensions, I have been told by the people now working with PERISA that it is not going to cost the State anything if this legislation is adopted. However, the reporting requirements involved include individual reporting to over 13.5 million employees working for State and local governments. It is going to cost something to print, for 90 percent of those people, a report and mail it to them across this Nation. We now distribute these reports by other means but PERISA would require that the individual employees be mailed a report every year. So where the PERISA people tell you it isn't going to cost anything, it is inevitably going to cost something.

Now, if I might just address the testimony that was presented earlier as to the cost of doing what is proposed here. We found in Tennessee that where the executive branch estimated it would cost us $100,000 to prepare fiscal notes, it cost us less than $40,000. We

added two people to the staff and that is what it took for us to get a fiscal note done on every bill that was introduced in the Tennessee General Assembly this year.

We wrote a fiscal note on every bill.

If there is some mechanism or some threshold that can be developed in the legislation that is now pending, we don't believe you will need a fiscal note on every bill with a threshold developed, we believe that the fiscal note process could be implemented at a very reasonable cost.

In fact, I would make you a promise that the State of Tennessee will furnish you a staffer, send him to Washington and let him work with the Congressional Budget Office gathering the information needed to estimate the costs to Tennessee for any kind of bill CBO studies.

There are many examples of how money can be saved if the cost of programs are known prior to their implementation. The costs may be of such magnitude that an alternative approach may be developed to achieve the objective end result.

My road superintendent estimates that $350,000 was spent in our county on the safe bridge program. The money was used to study the safety of bridges in the county. He already knew of the four bridges that the study found were bad. We could have fixed them for the $350,000 that we spent to study them. Another example is a proposition brought to us from the Public Health Department. It was proposed that $433,000 of HHS funds be spent to take a census to see how many children in Tennessee didn't have inoculations. I wondered why they had to take the census when we were considering a law that states that all school children must have inoculations. We found out through our study of the proposal that nobody was complying with the law. Thus, instead of spending $433,000 for a census, we just passed a bill saying that no school district can receive the school funds until every kid got the inoculation.

The Environmental Protection Act and the Clean Water Act are programs that are worthwhile. But let me make the point to you that some of those acts, I believe, go too far. The water and sewer director in Murfreesboro estimates that 30 percent of the increased cost of the new sewage treatment plant in Murfreesboro can be attributed to unnecessary requirements. That is a $10 million project. He also estimates that the increased cost of the Safe Water Distribution Act when fully implemented will cost another $1½ million which is not necessary.

We don't object to the standards, but we think somebody is putting an extra load of requirements on some of them.

With that in mind, I would conclude by saying that State legislatures are familiar with the fiscal note process. A lot of people cried wolf when they started talking about implementing the process, but we can't do without them now. There is no way that we could do without fiscal notes in Tennessee which, include the impact on local as well as State government.

Let me make two points in conclusion. I don't think State and local groups who come here voting for Federal programs and Federal funds would be quite as enthusiastic if they really knew what those programs were going to cost them. I believe they wouldn't be here trying to get more funds if they knew what the fiscal impact was going to be, and they don't know that in nearly every case.

And finally, I am absolutely amazed that today with declining revenues, budget cuts, inflation and unfunded mandates that Congress can even consider the passage of one more bill impacting State and local government without having some idea of what the cost is going to be.

I think it is irresponsible and unconscionable to do that. We are in a tight squeeze. We are trying to get by. We are trying to react to what I feel is a general public cry and for that reason the two alternatives are either to have a moratorium on bills until we get fiscal notes or require that every bill passed in the future be fully funded.

Thank you.

Senator SASSER. Thank you, Representative Bragg. I might say that this fiscal note bill goes in tandem with a lot of things that we have been trying to do on the subcommittee to streamline government and to make it more cost effective and thereby lift some of the load off State and local governments.

One thing we are trying to do in this subcommittee is to reform the Federal grant system. Senator Roth and I introduced S. 878, the Federal Assistance Reform Act of 1980 to address that problem. It is pending before the full committee. Last year, we had testimony from the former Governor of the State of Kentucky, Julian Carroll, that he thought this grant reform bill would save the State of Kentucky more money than they were presently getting in the form of State revenue sharing.

Then, there is S. 2, the Federal sunset bill. We think S. 2 will be effective in scrutinizing some of these Federal bureaucracies and Federal programs so that the regulations handed down will be cost effective. Under an enacted sunset bill, they will know that their actions are going to be subject to periodic review on the part of the Congress.

John, do you recall any legislation in Tennessee which seemed to cost relatively little in the first instance but which your fiscal note process revealed ultimately to have significant cost to State and local government?

Ms. BRAGG. The thing is, we have had State fiscal notes since 1974 and notes on costs to local governments since 1977. We have not passed any legislation without knowing the costs since that time.

But, normally, I go back to the matter of county officials' salaries. Back in the old days we set the minimum and maximum salaries for State officials, but after 1977 county officials brought a bill to us to raise their salaries. The impact on local government and the loss of fees to the county budget was over $1½ million. When the bill was introduced people were talking about county officials getting $150 to $1,000 a year increases but when we put it altogether the bill was $1½ million. Without fiscal notes, the bill would have been passed without any knowledge of what it was going to cost.

I would like to add that I have discussed with you privately some of the work you are doing. I would echo that the $42 million we are losing in general revenue sharing is a drop in the bucket compared to what we could save if we had the flexibility to consolidate the other billions of dollars in Federal funds that we receive.

We meet once a month in my Finance Ways and Means Committee to accept recommendations from the executive branch concerning the

acceptance of Federal funds. We have the responsibility to approve them in our Legislative Committee. We are continuing to receive grants, some of them for things that I wouldn't have the guts to vote for but we continue to recieve them because they are outright grants and don't add anybody to the payroll. We are afraid if we turn the money back Kentucky will get it.

Senator SASSER. And you say that 31 percent of the budget in Tennessee is made up of Federal funds.

Ms. BRAGG. It was last year. It would not be that much this year.

Senator SASSER. That is in round numbers, $1 billion.

Ms. BRAGG. A billion and eight million.

Senator SASSER. Representative Bragg, thank you very much for appearing here this morning, giving us the benefit of your views, and so ably representing the National Conference of State Legislatures.

Ms. BRAGG. Thank you.

[The prepared statement of Representative Bragg, with attachments follows:]

PREPARED STATEMENT OF REPRESENTATIVE JOHN BRAGG ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

It is my pleasure to sit before the Subcommittee on Intergovernmental Re- and Local Cost Estimate Act of 1980 and the State and Local Government Fiscal Note Act of 1980.

I am John Bragg, Member of the Tennessee General Assembly and Chairman of the Finance Ways and Means Committee. For the past year I have served as a member of the Executive Committee of the National Conference of State Legislatures (NCSL). I appreciate this opportunity to lend our vigorous support to S. 2691 which requires the Congressional Budget Office to prepare and submit estimates of costs to be incurred by State and local governments in implementing or complying with bills or resolutions under consideration by Congress.

Approximately 35 State legislatures require the attachment of fiscal notes to bills and resolutions under consideration in the legislatures which would increase or decrease revenues, expenditures or the fiscal liability of the State and its political subdivisions. In my State (Tennessee), fiscal notes for bills impacting local governments have been required since 1974. A constitutional amendment passed in 1977 further required that the State provide funding to local governments to implement or comply with State mandated programs or services. California, Florida, and Montana have similar requirements.

State and local cost estimates on proposed federal legislation would:

Permit Congress to identify during early deliberative stages hidden and significant costs to state and local governments in our times of limited fiscal resources;

Lessen the number of new constraints and mandates on state and local governments;

And improve state and local government access to data necessary for those governments to estimate costs of federal legislation for use in their fiscal decision making processes.

The need for fiscal notes on the Federal level becomes increasingly apparent as laws are passed requiring state government expenditures, while at the same time, state budgets are being stretched beyond their limits, due to inflation, recessioon and increased demands for services by citizens. Fiscal notes provide a framework from which a more careful consideration of the costs and benefits of proposals can be made. Bills or resolutions with hidden and often significant costs can be identified immediately and decisions related to the feasibility of such proposals can be made early on. This early warning system allows more time for amending proposals to make implementation more cost effective.

In a time when Congressional action is focusing on balanced budgets or reduced deficit spending, this fiscal note process will assist Congress in making responsible fiscal decisions. Prepassage focus on full implementation to all levels of governments would reduce potential public dissatisfaction with government initiatives which now often prove more costly than anticipated.

The estimates of state and local government costs before enactment of federal legislation will lessen the number of new constraints and mandates on state and local governments which, relative to their alleged benefits, are either very costly or inefficient. Congress often perceives a national problem and enacts legislation to alleviate that problem without consideration of the full effects on state and local governments. An example, Section 504 of the Rehabilitation Act of 1973 promised handicapped individuals full access to programs and activities receiving federal funds. This legislation, with the regulations that followed, burdened state and local governments with billions of dollars in costs that they are unable to meet. Knowledge of the effects of legislation before enactment may prompt revisions which would prevent state and local governments from being in contempt of Federal statutues because of their inability to comply with mandates entailing such massive costs.

The state and local government cost estimates could also serve as guidelines for agency rulemaking activity. For example, if a federal agency promulgates rules which significantly increase costs to state and local governments, the analyses would be relevant to determine if such activity was contemplated by Congress when it passed the legislation.

Besides improving the federal policy maker's decision making process by providing knowledge of the full costs of legislation before enactment, the state and local fiscal impact estimates will provide state and local governments with data improving their fiscal decision making process. This would be especially important since most state and local governments must approve their budgets before the federal government finalizes its budget. State and local costs estimates would become an important part of the information state and local governments would use when projecting revenues and expenditures for upcoming years.

In closing, I would like to again submit our support of this measure. State legislatures are familiar with the fiscal note process apparent by the 47 states that currently prepare state fiscal notes, of which 35 also prepare local fiscal notes. We at NCSL are also familiar of the process as we are required to attach fiscal notes to all of our policy positions, it is indeed a useful tool. If we can provide additional information on fiscal notes, please feel free to contact the NCSL Washington, D.C. staff.

Thank you for affording me this opportunity to speak to the fiscal note issue. I would be pleased to answer any questions you may have.

STATE FISCAL IMPACT ESTIMATE LAWS AND/OR PRACTICES

	Authority	Assess only State impacts	Assess State and local impacts
Alabama	Rule		(*)
Alaska	Statute	(*)	D
Arizona	do		
Arkansas	do		
California	do		
Colorado	Rule		
Connecticut	Statute		
Delaware	do	(*)	
Florida	do		(*)
Georgia	do	(*)	
Hawaii	D	D	D
Idaho	Rule		
Illinois	Statute		
Indiana	Rule		
Iowa	do		
Kansas	Statute		
Kentucky	Rule	(*)	
Louisiana	do		
Maine	do		(*)
Maryland	Statute	(*)	
Massachusetts	Rule		
Michigan	Statute		(*)
Minnesota	do	(*)	A
Mississippi	Rule		
Missouri	Statute		(*)
Montana	do	(*)	
Nebraska	Rule		
Nevada	Statute		
New Hampshire	do		
New Jersey	do		
New Mexico	B	(*)	
New York	A	A	A
North Carolina	B	(*)	C
North Dakota	Rule		
Ohio	Statute		
Oklahoma	B		
Oregon	Statute		
Pennsylvania	Rule	(*)	
Rhode Island	Statute		(*)
South Carolina	do	(*)	
South Dakota	do		
Tennessee	do		
Texas	do		
Utah	do		
Vermont	A	A	
Virginia	Statute		
Washington	do		(*)
West Virginia	Rule	(*)	
Wisconsin	Statute		
Wyoming	do		(*)

Key to abbreviations:
A—Legislation introduced or considered last session.
B—By administrative practice.
C—Local impact assessed only in the House.
D—Awaiting additional information.
E—Local impact required by statute.
Note: 47 States have fiscal note processes.

STATE OF TENNESSEE,
DEPARTMENT OF PUBLIC HEALTH,
Nashville, Tenn., August 19, 1980.

Ref. HSQ-53-P

ADMINISTRATOR,
Health Care Financing Administration,
Department of Health and Human Services,
P.O. Box 17082,
Baltimore, Md.

DEAR ADMINISTRATOR: The administration of the Tennessee Department of Public Health, which is both the State Survey Agency and the Single State Agency, is through the enclosed attachment making comments concerning the proposed Conditions of Participation for Skilled Nursing and Intermediate Care Facilities. While we support the concept of adequate quality of life for the State's elderly in nursing homes participating in the Medicare and Medicaid Programs, we have serious reservations concerning changes the proposed regulations will create in Tennessee.

In reviewing the various changes proposed, especially those which would be new for the ICF's, we see serious fiscal impacts. Tennessee is a state with a predominance of ICF's (224) as opposed to SNF's (53). Because of this mixture, the cost impact for the increased administrative, documentation, and staff requirements will effect an estimated five percent cost increase in the ICF's which translates into $9 million per year. We believe this increase is in no way justified. The present regulations provide a more than adequate regulatory base for services to our State's elderly. Unless Tennessee is very unusual, with few exceptions, we see nothing but cost increases that will far exceed your "Draft Regulatory Analysis" of June 30, 1980 of $80 million nationwide. Additionally, the cost effectiveness of these changes has not been demonstrated.

We appreciate the opportunity to formally comment on these regulations and ask that serious consideration be given to eliminating all but those changes with no associated cost increase. Tennessee is only interested in regulations which will decrease cost and/or provide the State with greater flexibility in the regulatory process. We see no evidence of either of these criteria prevailing in these regulations.

Sincerely yours,

BEN C. CRIM,
Assistant Commissioner,
Bureau of Medicaid Administration and Coordination.

Attachment.

FISCAL IMPACT ON TENNESSEE OF "RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976" AND "MOTOR CARRIER ACT OF 1980"

Two acts of Congress recently signed into law have had a significant negative impact on ad valorem property tax revenues to local government in Tennessee.

The first is the "Railroad Revitalization and Regulatory Reform Act of 1976" (know as the "4–R Act"), Public Law 94–210 effective on February 5, 1979; and the second is the "Motor Carrier Reform Act of 1980", Public Law 96–296 effective on July 1, 1980. These Acts contain almost identical sections prohibiting discriminatory assessments by state and local governments of railroads, private car companies, and truck lines as compared to commercial and industrial taxpayers in the same jurisdictions.

Tennessee is among the states severely affected by these federal laws because of its constitutional requirement that railroads and motor carriers be classified as "public utilities" and their real and personal property assessed at 55 percent of value; while industrial and commercial property is separately classified and assessed at 40 percent of value for real property and 30 percent of value for personal property. The public utility classification also includes 14 other types of property, including telephone, telegraph, electric, water and sewerage, barge, airline, and bus companies.

For the 1979 tax year, the "4–R Act" reduced railroad assessments in Tennessee by 36 percent and reduced county and city property tax revenues by some $3,584,000. The fiscal impact for the 1980 tax year may approach $4,000,000.

The "Motor Carrier Act", enacted for the first time in 1980, will have the effect of reducing truck line assessments in Tennessee by as much as 45 percent and reducing county and city revenues by approximately $2,000,000.

MEMO—STATE OF TENNESSEE

To: Governor Alexander, Commissioner Donelson.
From: Randy Griggs, Lisa Barnes.
Date: June 18, 1980.
Re low income energy assistance program.

We recently have returned from a Baltimore conference with federal and state officials to discuss federal regulations concerning the Low Income Energy Assistance Program. This memo contains a summary of the program, various problems and issues associated with the program, a timetable, and a suggested plan of action.

BASIC PROGRAM

The Home Energy Assistance Act of 1980 (Title III of Public Law 96-223) (HEAP) authorizes grants to states to provide assistance to eligible households to offset the rising costs of home energy that are excessive in relation to household income. The funds for this program are produced by the revenue generated by the windfall profits tax.

The Department of Health and Human Services is the federal granting agency. The states have the responsibility for local administration of the program and are required to submit a plan by September 15, 1980 for its operation. The Governor designates the administering state agency.

Funding and administrative match.—At this time, Congress has not acted on the appropriations for HEAP. However, it is believed that the program will be funded at a $1.8 billion level. Tennessee then would be eligible for approximately 29 million dollars.

The program requires a 50/50 match ratio on the administrative costs with the states allowed up to 5 percent of the program allocation for administrative costs. There is a waiver provision allowing the states to request up to 7½ percent for administration in the regulations. Based on the projected allocation of 29 million and with a 10 percent administrative cost, the state match is approximate by $1.45 million.

Administration of the State program.—Due to the regulations regarding eligibility and participation restrictions of this program, the delivery system will require an individualized application process that puts priority on low income and energy-vulnerable applicants. The program will be a one-to-one client/provider system which must be conducted at the local level.

Tennessee has only two identifiable systems capable of operating this program: the Department of Human Services through its county level Family Assistance and Social Service delivery system and the Tennessee Community Services Administration Community Action Program (T.C.S.A./CAP) network. DHS has indicated that they are not in a position to assume total responsibility of the energy assistance program due to its (DHS) present staffing pattern. TCSA, through a contractual relationship between the state and the local agencies, believes it can operate some aspects of the program.

PROBLEMS

From the state perspective, the major problems/issues with the present program and regulations are:

(1) State Match Requirements:
  (a) Possibility of obtaining funds from the supplemental appropriation process
  (b) Use of a statement of intent to fund program when legislature reconvenes
  (c) Restriction that only state funds inkind services can be used to provide match
(2) Complicated nature of the program regulations:
  (a) Eligibility requirements—prioritizing low income based on the Bureau of Labor Statistics Lower Standard of Income and energy vulnerable individuals
  (b) Public participation process in plan development
  (c) Vendor agreements with every provider
  (d) Data and monitoring requirements not defined

(c) Restriction of state to retain regular benefit levels in any federal assistance program until October 1, 1981 (i.e., no change in state level of AFDC, SSI, and unemployment compensation)

(3) Reaction of politically sensitive advocacy groups (aging, low income, veterans) if the state does not participate in program

TIME TABLE

June 30—States must submit description of public participation process. States have the option to use the Social Security Administration (SSA) for making payments to SSI recipients.

August 15—Financial report on quarterly estimates of need for first quarter fiscal year 1981 due.

September 1—Completed SSA agreement due.

September 15—Final day for state's submittal of conditional plans (states can revise).

October 1—First quarter grant made to states.

STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
Nashville, Tenn., July 24, 1980.

MEMORANDUM

To: Lewis R. Donelson, Commissioner.
From: Jerry P. Lee, Assistant Commissioner, Division of Budget.
Subject: Reduction in Federal funding fiscal year 1980–81.

The following summary reflects the total loss of federal funding to Tennessee for fiscal 1980–81. The loss amounts to $87,900,000 and is basically due to reduced federal participation as a result of the State's inability to match available federal funds because of declining state tax revenue, the abolition of federal revenue sharing, and reductions in the level of state support for the Medicaid program. In addition to the direct loss of federal funds, the figures presented reflect federal cost avoidance in Medicaid. A listing by department of the direct reductions is also attached for your review. No attempt has been made to reflect additional federal earnings for the 1.2% pay increase or acceleration of the longevity program for state employees.

Direct reductions in the budget document recommendations	$14, 400, 000
Loss of recurring Federal revenue sharing funds	44, 300, 000
Subtotal	58, 700, 000
Medicaid cost avoidance	29, 200, 000
Total loss	87, 900, 000

Attachment

Departmental summary of direct reductions for Federal funding 1980–81

Department:	Amount
Executive	$61, 400
Commissions	5, 500
Personnel	400
Conservation	2, 500
Wildlife Resources Agency	13, 500
Economic & Community Development	1, 000
Education (K–12)	550, 000
Higher Education (THEC and TSAC)	1, 700
Employment Security	1, 228, 100
Labor	82, 000
Military	121, 200
Public Health	670, 000
Medicaid	11, 583, 000
Human Services	110, 900
Total direct reductions	14, 531, 300

Senator SASSER. We are going to keep the hearing record open for an additional week to allow further comments that others might wish to make. Thank you.

The committee is adjourned.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

96TH CONGRESS
2D SESSION

S. 3087

To amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 4 (legislative day, JUNE 12), 1980

Mr. SASSER (for himself, Mr. MOYNIHAN, Mr. ROTH, Mr. NUNN, and Mr. DANFORTH) introduced the following bill; which was read twice and referred jointly to the Committees on the Budget and Governmental Affairs pursuant to the order of the Senate of August 4, 1977

A BILL

To amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State and Local Government Fiscal Note Act of 1980".

SEC. 2. (a)(1) Section 403 of the Congressional Budget Act of 1974 is amended by inserting "(a)" before "The".

(2) Clause (1) of section 403(a) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "the costs which would be incurred in carrying out such bill or resolution" and inserting in lieu thereof "the costs which would be incurred by the Federal Government in carrying out such bill or resolution, and an estimate of the costs which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution".

(3) Section 403(a) of such Act (as redesignated by paragraph (1) of this subsection) is further amended by striking out "estimate" each place it appears in clause (2) and in the last sentence, and inserting in lieu thereof "estimates".

(b) Section 403 of such Act is further amended by adding at the end thereof the following subsections:

"(b) For purposes of subsection (a)(1), the term 'local government' has the same meaning as in section 103 of the Intergovernmental Cooperation Act of 1968.

"(c) For purposes of subsection (a)(1), the term 'significant bill or resolution' is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State or local governments of $200 million or more or to have excep-

tional fiscal consequences for a particular level of government or geographic region.".

SEC. 3. The amendments made by section 2 of this Act shall apply with respect to significant bills or resolutions reported by committees of the Senate and the House of Representatives after September 30, 1981.

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 5. The authorization granted under the terms of this Act shall expire on September 30, 1984.

II

96TH CONGRESS
2D SESSION

S. 2691

To amend the Congressional Budget Act to require the Congressional Budget Office, for every bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, JANUARY 3), 1980

Mr. MOYNIHAN introduced the following bill; which was read twice and referred jointly pursuant to the order of August 4, 1977 to the Committees on the Budget and Governmental Affairs

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A BILL

To amend the Congressional Budget Act to require the Congressional Budget Office, for every bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State and Local Government Cost Estimate Act of 1980".

SEC. 2. (a)(1) Section 403 of the Congressional Budget Act of 1974 is amended by inserting "(a)" before "The".

(2) Clause (1) of section 403(a) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "costs which would be incurred in carrying out such bill or resolution" and inserting in lieu thereof "the costs which would be incurred by the Federal Government in carrying out such bill or resolution, and an estimate of the costs which would be incurred by State and local governments in carrying out or complying with such bill or resolution".

(3) Section 403(a) of such Act (as redesignated by paragraph (1) of this subsection) is further amended by striking out "estimate" each place it appears in clause (2) and in the last sentence, and inserting in lieu thereof "estimates".

(b) Section 403 of such Act is further amended by adding at the end thereof the following new subsection:

"(b) For purposes of subsection (a), the term 'local government' has the same meaning as in section 103 of the Intergovernmental Cooperation Act of 1968.".

SEC. 3. The amendments made by the first section of this Act shall apply with respect to bills and resolutions reported by committees of the Senate and the House of Representatives after the date of the enactment of this Act.

STATEMENT SUBMITTED BY THE NATIONAL ASSOCIATION OF COUNTIES BEFORE THE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS ON THE STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1980 (S.2691) AND THE STATE AND LOCAL GOVERNMENT FISCAL NOTE ACT OF 1980 (S.3087), SEPTEMBER 9, 1980.

CHAIRMAN SASSER, AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS, THE NATIONAL ASSOCIATION OF COUNTIES (NACo),* THE ONLY NATIONAL ORGANIZATION REPRESENTING MORE THAN 3,000 COUNTY GOVERNMENTS IN THE UNITED STATES, APPRECIATES THE OPPORTUNITY TO PRESENT THE VIEWS OF OUR NATION'S COUNTY GOVERNMENTS ON FISCAL NOTES.

LET ME BEGIN BY THANKING YOU CHAIRMAN SASSER FOR YOUR SERIOUS CONSIDERATION OF THIS IMPORTANT ISSUE. I CAN ASSURE YOU THAT THE NATION'S COUNTY GOVERNMENTS ARE WHOLEHEARTEDLY SUPPORTIVE OF A MORE RATIONALE MEANS THROUGH WHICH POLICY DEVELOPMENT CONSIDERS THE FISCAL IMPACT OF PROPOSED PROGRAMS. THE TWO MEASURES UNDER CONSIDERATION, S.2691 AND S.3087, WOULD PROVIDE THIS. MOST SIGNIFICANT, AND FROM OUR VIEW, IMPORTANT ELEMENT OF THESE PARTICULAR MEASURES IS THAT THEY CONSIDER NOT ONLY THE FISCAL IMPLICATIONS FOR THE FEDERAL GOVERNMENT, BUT ALSO THAT FOR THE STATE AND LOCAL GOVERNMENTS. IN SO DOING, THESE BILLS RECOGNIZE THE VITAL ROLE EACH LEVEL OF GOVERNMENT PLAYS IN COST-EFFECTIVE PROGRAM DELIVERY, AND CEMENTS OUR PARTNERSHIP ROLE MORE FIRMLY. IT IS VIRTUALLY IMPOSSIBLE FOR THE FEDERAL GOVERNMENT TO HOLD DOWN COSTS WITHOUT CONSIDERING THE FINANCIAL OBLIGATIONS PLACED ON STATE AND LOCAL GOVERNMENTS IN MEETING NATIONAL POLICY OBJECTIVES.

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* The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government.

The goals of the organization are to:
- improve county government;
- serve as the national spokesman for county government;
- act as a liaison between the nation's counties and other levels of government;
- achieve public understanding of the role of counties in the federal system.

A YEAR AGO THIS JUNE, THE EXECUTIVE DIRECTORS OF THE MAJOR PUBLIC INTEREST GROUPS REPRESENTING STATE AND LOCAL GOVERNMENTS, APPEARED BEFORE THE HOUSE COMMITTEE IN SUPPORT OF H.R.3697, A COST ESTIMATES BILL INTRODUCED BY REPRESENTATIVE HOLTZMAN. WE UNANIMOUSLY SUPPORTED THE CONCEPT OF FISCAL NOTES THEN, AND STILL DO. OVER A YEAR HAS ELASPED SINCE THAT TESTIMONY. IT IS NACo's HOPE, MR. CHAIRMAN, THAT THE SENATE WILL MOVE SPEEDILY IN ENDORSING A COST ESTIMATE OR FISCAL NOTE BILL. COUNTIES HOPE TO SEE A BILL SIGNED INTO LAW THIS YEAR.

BEFORE WE SPECIFICALLY ADDRESS THE TWO MEASURES UNDER CONSIDERATION, WE PREFACE OUR REMARKS SO THAT WE MAY SET THE RECORD STRAIGHT,SO TO SPEAK.

WE IN NO WAY OBJECT TO THE INTENT OF MOST FEDERAL MANDATES. PHILOSOPHICALLY, COUNTIES BELIEVE IN CLEAN WATER; WE BELIEVE THE HANDICAPPED HAVE THE EQUAL RIGHTS TO PARTICIPATE FULLY AND FREELY. HOWEVER PRACTICALLY SPEAKING, THE COUNTIES TAKE ISSUE WITH WHO SHALL PAY THE COSTS TO ACHIEVE THESE WELL INTENDED OBJECTIVES WHEN THE MEANS TO MEET THEM ARE DECIDED BY REMOTE FEDERAL OFFICIALS. NACo BELIEVES THAT THE METHOD TO MEET NATIONAL POLICY OBJECTIVES SHOULD BE LEFT TO THE STATE AND LOCAL OFFICIALS. LOCAL ELECTED OFFICIALS ARE IN A FAR BETTER POSITION TO DESIGN A METHOD WHICH BALANCES COSTS WITHIN A REASONABLE AND AFFORDABLE RANGE, WHILE SPECIFICALLY SERVING THE APPROPRIATE CLIENTELE OR NEED OF THAT PARTICULAR COMMUNITY. ALL TOO OFTEN,FEDERAL MANDATES ARE OVER PRESCRIBED AND OVER REGULATED. ATTEMPTS TO MEET ALL SITUATIONS BY LAW OR AGENCY REGULATION IS MOST OFTEN WASTEFUL AND INEFFECTIVE. IT IS FOR THIS REASON THAT TOTAL, MEANINGFUL AND EARLY CONSULTATION WITH STATE/LOCAL ELECTED LEADERS IS OF UTMOST IMPORTANCE IN THE DEVELOPMENT OF ANY FEDERAL REQUIREMENT AFFECTING THE STATE AND LOCAL SECTOR.

THERE IS AN OVERRIDING BELIEF IN THE CONGRESS, AND THE FEDERAL EXECUTIVE BRANCH, THAT MOST MANDATES OR COSTLY REQUIREMENTS PLACED ON LOCAL OR STATE GOVERNMENTS ARE A CONDITION OF AID. THEREFORE, A COUNTY GOVERNMENT HAS THE OPTION TO ASSUME THE LIABILITY FOR THESE REQUIREMENTS. THUS, THOSE COSTS INCURRED ARE A LOCAL OPTION. THIS IS JUST NOT SO. ALTHOUGH IT IS TRUE THE COUNTY HAS THE RIGHT

TO CHOOSE WHICH FEDERAL PROGRAM IT WISHES TO PARTICIPATE IN, IT NO LONGER HAS THE OPTION TO IGNORE THE HELP THE FEDERAL GOVERNMENT OFFERS. COUNTIES ARE FISCALLY HARDPRESSED. THE TAX BASE IS LIMITED, AND COSTS CONTINUE TO SKYROCKET.

LOCAL COSTS ARE COMPLICATED BY FEDERAL MANDATED OBJECTIVES THAT ARE NOT CONDITIONS OF AID. THESE MANDATES, SUCH AS ENVIRONMENTAL PROTECTION, PREVAILING WAGE RATES, AND CIVIL RIGHTS PROTECTION, CROSS-SECT ALL COUNTY OPERATIONS. THE OMB HAS RECENTLY IDENTIFIED MORE THAN FIFTY (50) OF THESE TYPES OF REQUIREMENTS. IN MEETING THESE MANDATES, LOCAL GOVERNMENTS ARE FORCED TO SHIFT THEIR FINANCIAL RESOURCES AND STAFF FROM EQUALLY IMPORTANT FUNCTIONS TO MEET THESE REQUIREMENTS. THIS UNDERMINES THE ABILITY OF THE COUNTY GOVERNMENT TO GOVERN ITSELF EFFECTIVELY AND AT A PRICE IT CAN AFFORD FROM EXISTING OWN SOURCE RESOURCES. COSTLY MANDATES FORCE COUNTIES TO TURN TO THE FEDERAL GOVERNMENT TO STAY AFLOAT. GIVEN THIS CONSIDERATION, THERE IS NO OPTION.

A RECENT STUDY CONDUCTED BY THE UNIVERSITY OF CALIFORNIA AT RIVERSIDE, HAS FOUND THAT A LOCAL GOVERNMENT IS FORCED TO COMPLY WITH AN AVERAGE OF 1,000 FEDERAL AND STATE MANDATES IN A GIVEN YEAR. CONDITIONS OF AID ACCOUNT FOR ONLY 500 OF THESE, WHILE THE OTHER HALF ARE A RESULT OF DIRECT ORDERS. THE COSTS OF THE MANDATES CANNOT BE ADEQUATELY MEASURED IN THAT A LARGE PORTION HAVE BEEN INTERNALIZED OVER A 15 TO 20 YEAR PERIOD.

COMMENTS ON S.2691 AND S.3087

WHILE NACo SUPPORTS S.2691 INTRODUCED BY SENATOR MOYNIHAN, AND THE HOUSE COUNTERPART, WE RECOGNIZE THE CONCERNS OF THE CONGRESSIONAL BUDGET OFFICE (CBO). WE FEEL THAT S.3087, THE BILL YOU RECENTLY INTRODUCED MR. CHAIRMAN, ADDRESSES MANY OF THE CBO'S CONCERNS. WE ALSO BELIEVE THAT THE FISCAL NOTE CONCEPT IS A GOOD ONE, AND IS MUCH NEEDED. HOWEVER, THE DIFFICULTY OF SUCCESSFULLY ACCOMPLISHING A PROGRAM OF THE MAGNITUDE ORIGINALLY PROPOSED, COULD MAKE THE ENTIRE PROGRAM "FALL FLAT ON ITS FEET". IT IS FOR THESE REASONS THAT NACo BELIEVES THAT

MR. SASSER'S MEASURE OFFERS AN OPPORTUNITY TO TRY THE PROCESS WITH MAJOR LEGISLATION WHICH AFTER A TRIAL BASIS, COULD BE OPENED UP ON AN INCREMENTAL BASIS. WE SEE S.3087 AS A FIRST STEP IN A NUMBER OF PHASES TO DEVELOP A MORE COMPREHENSIVE FEDERAL LEGISLATIVE PROCESS WHICH RECOGNIZES AND CONSIDERS ALL ASPECTS OF PROPOSED PROGRAMS.

HOWEVER, LIKE THE CITIES, WE DO HAVE RECOMMENDATIONS REGARDING H.R.3087 WE WISH TO OFFER. THESE ARE:

1) AS MENTIONED EARLIER IN THIS STATEMENT, CONSULTATION WITH STATE/LOCAL OFFICIALS IS ABSOLUTELY ESSENTIAL SHOULD a) THE CBO BE ABLE TO ACCURATELY DETERMINE INITIAL COSTS FOR THE $200 MILLION IMPACT ASSESSMENT; AND b) SHOULD THE CBO BE ABLE TO MAKE AN ACCURATE ESTIMATE OF LOCAL GOVERNMENT COSTS, MANY OF WHICH MAY BE HIDDEN COSTS RESULTING FROM CHANGES IN INTERNAL MANAGEMENT PROCESSES AND THE LIKE. ONLY EXTENSIVE CONSULTATIONS COULD BRING SUCH COSTS TO THEIR ATTENTION;

2) CONSULTATION SHOULD TAKE PART IN TWO PHASES, THE FIRST IN THE INITIAL ANALYSIS AS MENTIONED IN "a" and "b" ABOVE: AND THE SECOND IN THE FORM OF REVIEW BY SEVERAL STATE/LOCAL GOVERNMENTS OF THE COMPLETED ANALYSIS. THE SECOND REVIEW WOULD ALLOW STATE/LOCAL OFFICIALS TO VERIFY THE INITIAL ANALYSIS, OR ADD TO THE ANALYSIS THEREBY MAKING IT MORE COMPLETE. THE REVIEW COULD BE DONE BY ACTUAL REVIEW BOARDS ESTABLISHED FOR THIS PURPOSE, OR ON AN AD HOC BASIS DEPENDING ON THE ISSUE.

3) WE HAVE SOME CONCERNS REGARDING THE $200 MILLION IMPACT "TRIGGER". THOUGH NACo REALIZES THAT A TRIAL PROCESS CANNOT POSSIBLY MEASURE THE IMPACT OF ALL PROPOSED PROGRAMS, WE FEEL THAT THE FIGURE OF $200 MILLION OR THE WORD "SIGNIFICANT" MAY NOT MEET ALL NECESSARY SITUATIONS. AS WITH THE REGULATORY REFORM MEASURE PREVIOUSLY BEFORE THE SUBCOMMITTEE, WE RECOMMEND THAT THE $200 MILLION IMPACT FIGURE BE REDUCED TO $100 MILLION. IN ADDITION, WE RECOMMEND THAT THE CBO

CONSULT WITH STATE/LOCAL GOVERNMENTS AND THEIR REPRESENTATIVE ORGANIZATIONS TO DETERMINE WHAT PROPOSED PROGRAMS FALL UNDER THE CATEGORY OF "SIGNIFICANT".

WHILE WE REALIZE THE IMPORTANCE OF CONDUCTING COST ESTIMATE ANALYSIS IMMEDIATELY, WE ENDORSE THE SASSER CHANGE OF EFFECTIVE DATE TO OCTOBER 1, 1981. THE DELAYED DATE WILL ALLOW THE CBO TO MAKE ARRANGEMENTS TO MEET THE ADDITIONAL WORKLOAD.

FINALLY, THE CBO CRITICIZES PROPOSED COST ESTIMATE LEGISLATION SINCE NONE INCLUDE THE OTHER SIDE OF LAWMAKING, REGULATIONS. THOUGH THERE IS SOME DEGREE OF MERIT TO THAT CRITICISM, NACo WISHES TO POINT OUT THAT CBO MUST, TO SOME EXTENT, INTERPRET LEGISLATION IN ORDER TO CONDUCT THEIR ANALYSIS. SUCH INTERPRETATION BY A CONGRESSIONAL BODY COULD GO A LONG WAY IN HELPING TO ESTABLISH GUIDELINES WITHIN WHICH A REGULATORY AGENCY WOULD PROMULGATE THE IMPLEMENTING REGULATIONS. THIS ADDITIONAL SAFEGUARD, SO TO SPEAK, COULD HELP TO PREVENT "RUNAWAY AGENCY RULEMAKING", AND THUS, COULD PROVIDE A GREAT SERVICE TO THE CONGRESS, AND THE AMERICAN PEOPLE IT SERVES.

COSTS TO COUNTIES

THE COSTS OF FEDERAL MANDATES HAS BEEN BROUGHT TO CONGRESS' ATTENTION TIME AND TIME AGAIN. WE HAVE SUPPLIED THIS INFORMATION TO THE HOUSE IN TESTIMONY ON H.R.3697. FRED COOPER, COUNTY SUPERVISOR OF ALAMEDA COUNTY, CALIFORNIA, HAS INCLUDED IN TESTIMONY BEFORE THIS CONGRESS THAT THE TOTAL COST OF THE 504 REGULATIONS TO COUNTY GOVERNMENTS IN THIS NATION WILL BE $10 TO $20 BILLION: ALMOST ONE-HALF OF THESE COSTS ARE TO RETROFIT COUNTY SCHOOLS.

THE CUMULATIVE COSTS OF ALL FEDERAL AND STATE MANDATES HAS BECOME STAGGERING. IN SOME COUNTIES, NEARLY 60 TO 80% OF THEIR BUDGETS ARE ALLOCATED TO MEET MANDATED SERVICES OR REQUIREMENTS. BUT, SENATORS, THE COSTS OF FEDERAL REQUIREMENTS ON LOCAL BUDGETS IS ONLY ONE ASPECT OF THE DETRIMENTAL EFFECT CONGRESSIONAL AND ADMINISTRATIVE REQUIREMENTS HAVE ON LOCAL OPERATIONS. AS IMPORTANT IS THE IMPACT THESE REQUIREMENTS HAVE ON COUNTY GOVERNMENTS' ABILITY TO MANAGE EFFECTIVELY, OR TO IMPROVE THEIR

MANAGEMENT CAPACITY AND HOLD DOWN COSTS. NACo SURVEYED 200 COUNTY GOVERNMENTS TO DETERMINE THE IMPACT OF FEDERAL REQUIREMENTS ON THEIR STRUCTURE AND ADMINISTRATION. THOSE REQUIREMENTS NAMED MOST FREQUENTLY AS HAVING A NEGATIVE IMPACT WERE:

- EPA REGULATIONS
- SECTION 504 HANDICAP REQUIREMENTS
- WELFARE REGULATIONS
- 1972 WATER POLLUTION CONTROL ACT
- HEALTH SYSTEMS ACT

ALTHOUGH FEDERAL REGULATIONS ARE CITED FREQUENTLY, IN SOME INSTANCES THESE REGULATIONS ARE ACCURATE INTERPRETATIONS OF CONGRESSIONAL INTENT. EACH CITED ARE OUTGROWTHS OF FEDERAL MANDATES. THESE REQUIREMENTS WERE THE DIRECT RESULT OF CONGRESSIONAL, NOT REGULATORY, ACTION. MANY FORCE COUNTY GOVERNMENTS TO MAINTAIN INCREASED STAFF LEVELS TO MEET COMPLIANCE.

WITH SO MUCH OF LOCAL GOVERNMENTS BUDGET PREDETERMINED BY FEDERAL AND STATE MANDATES, OUT RIGHT ORDERS, IT RAISES THE QUESTION OF WHO RESTS ACCOUNTABLE FOR THE USE OF LOCAL TAXPAYER'S DOLLARS. CERTAINLY, IT IS NO LONGER LOCAL GOVERNMENT OFFICIALS. ALL LEVELS OF GOVERNMENT, FEDERAL, STATE, AND LOCAL, MUST FACE UP TO THE ACCOUNTABILITY QUESTION, AND RETURN LOCAL GOVERNMENT BACK INTO THE HANDS OF THE PEOPLE ELECTED LOCALLY TO CONTROL THE PURSE STRINGS. COST ESTIMATES OF FEDERAL PROGRAMS IS A GOOD STEP IN THAT DIRECTION. COUPLED WITH CONSULTATION ON HOW TO MEET MANDATES, LOCALLY ELECTED OFFICIALS CAN REGAIN THE CONTROL OVER THEIR OWN BUDGETS, AND IMPLEMENT INNOVATIVE COST SAVING AND SHARING TECHNIQUES THAT WOULD ELIMINATE EXCESS AND WASTE.

CONCLUSION

THE CONGRESS HAS NEVER HAD THE MEANS OR A METHOD BY WHICH IT COULD ACCESS THE CUMULATIVE AFFECT REQUIREMENTS PLACE ON STATE OR LOCAL GOVERNMETNS. ALTHOUGH THE IDEAS MAY SOUND GOOD AT FIRST GLANCE, THEY BECOME A HORROR STORY IN THE REALITY OF IMPLEMENTATION. COUNTIES BELIEVE, HOWEVER, THAT THE CONGRESS WILL SERIOUSLY WEIGH WELL INTENDED REQUIREMENTS AGAINST THE COSTS OF IMPLEMENTATION WHEN THE FACTS ARE PRESENTED. FISCAL NOTES WILL PROVIDE THE METHOD THROUGH WHICH THE CONGRESS CAN TAKE A MORE RATIONALE APPROACH TO POLICY DEVELOPMENT.

THE NATIONAL ASSOCIATION OF COUNTIES SUPPORTS S.3087, AND S.2691. WE BELIEVE THE PROVISIONS OF THESE MEASURES WILL BRING A MORE RATIONALE AND REALISTIC APPROACH TO ENACTING LAWS AND PRODUCE COST SAVINGS WHICH WILL EVENTUALLY OFFSET THE INITIAL EXPENSES. WE IN STATE AND LOCAL GOVERNMENT KNOW THAT THE CONCEPT OF FISCAL NOTES WILL WORK. WE BELIEVE THAT SENATOR SASSER'S MEASURE (S.3087) PROVIDES A WORKABLE FIRST STEP APPROACH WHICH RESPONSIBLY ADDRESSES MANY OF THE CBO'S CONCERNS. THE NATIONAL ASSOCIATION OF COUNTIES THREFORE URGES THE MEMBERS OF THIS SUBCOMMITTEE, AND THEIR COLLEAGUES IN THE SENATE TO PROMPTLY PASS THIS VITAL LEGISLATION. WITHOUT COST ESTIMATES OF PROPOSED PROGRAMS ON ALL LEVELS OF GOVERNMENT, ALL GOVERNMENTS WILL CONTINUE TO PAY THE PRICE IN WASTE.

National Governors' Association

George Busbee
Governor of Georgia
Chairman

Stephen B. Farber
Executive Director

TESTIMONY OF
GOVERNOR RICHARD A. SNELLING, CHAIRMAN
COMMITTEE ON EXECUTIVE MANAGEMENT
AND FISCAL AFFAIRS
AND
GOVERNOR RICHARD W. RILEY, CHAIRMAN
SUBCOMMITTEE ON MANAGEMENT IMPROVEMENT
NATIONAL GOVERNORS' ASSOCIATION
SUBMITTED FOR THE RECORD OF
HEARINGS HELD BY THE
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

SEPTEMBER 5, 1980

Mr. Chairman:

The purpose of our testimony is to advise you of the strong support of the nation's Governors for a requirement that the Congressional Budget Office assess the cost to state and local governments of legislation reported by House and Senate Committees. As you know, CBO now generally limits its analysis on the cost of such legislation to the impact on the federal Treasury. We greatly appreciate your support for the preparation of state and local fiscal notes as demonstrated by your introduction of the State and Local Fiscal Note Act of 1980 with Senator Moynihan, Senator Roth, Senator Nunn and Senator Danforth. A similar House bill, H.R. 3697, has attracted wide support in Congress; it has 141 co-sponsors.

As a member of the Budget Committee, Mr. Chairman, you do not need to be reminded that resources available to governments at all levels are severely limited. Gone are the days when little attention was focused on the size of budget deficits and when federal intergovernmental aid

grew at 15% each year. Increased skepticism about the ability of government to run programs effectively and growing concern about public spending have put federal, state, and local officials on notice that they must be prepared in the future to make do with less and to do more with less.

Enactment of programs without careful analysis of the needs they are to serve, of how they relate to efforts already underway to meet the same goal, and of how much full implementation will cost contributes to public dissatisfaction with government initiatives. New and revised government programs must be carefully constructed to address specific problems. They must avoid wasteful duplication. They must not make false promises to beneficiaries which create bitterness when left unfulfilled and which deflect attention from effective, pragmatic solutions.

The question of the legitimacy of unfunded mandates placed on one level of government by another has been extensively debated in recent months. The intent of the mandates--to make this country cleaner, safer, and more responsive to people in need--such as handicapped persons--is beyond reproach. The debate turns not on the intent of the mandates but on the quality of the analytical work on which they are based.

In our discussions on the cost estimate issue, we have encountered the concern that preparation of fiscal notes on all legislation reported by congressional committees would add greatly to the work of congressional analysts. We are willing to support proposals to limit the number of fiscal notes prepared, and we are willing to participate in the development of the estimates by establishing a working group to help determine which mandates should be reviewed and by providing whatever information we have available to congressional staff members. We are also prepared to

support budgetary requests by the Congressional Budget Office to permit CBO to carry out its new assignment.

Mr. Chairman, the adoption of legislation to prepare fiscal notes on federal mandates imposed on state and local governments was termed "good, common sense" by one newspaper. We have no doubt that adoption of cost estimate legislation would be viewed by the American people as a prudent, responsible step taken by Congress in the interest of improved public policy.

During the opening plenary session of the NGA annual meeting last month, the Governors discussed federalism reform. The concept contained in your bill was specifically mentioned during the session, and the Governors reaffirmed their support for the preparation of fiscal notes on federal legislative proposals.

The National Governors' Association strongly urges you to recommend enactment of the change to section 403 of the Congressional Budget Act proposed in the Fiscal Note Act. We commend you for your sensitivity to this question, which is of fundamental importance to state governments and to the future of fiscal federalism.

[Whereupon, at 10:55 a.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

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